HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

R.S.A No.2992 of 2006
Date of decision : 11.5..2007

Ram Kumar **.....Appellant**

versus

Gram Panchayat, Palra and another **.....Respondents**

CORAM : HON'BLE MR. JUSTICE HEMANT GUPTA.

Present : Mr.V.K.Jain, Senior Advocate with
Mr.Aman Jain, Advocate for the appellant.

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JUDGMENT

HEMANT GUPTA, J. (Oral)

The plaintiff is in second appeal aggrieved against the judgment and decree passed by the Courts below whereby the suit for declaration that the suit property is owned by the plaintiff exclusively, was dismissed holding that the Civil Court has no jurisdiction to grant such a declaration.

It was found that the plaintiff has claimed title over the suit property by virtue of a Writing dated 8.3.1951, whereas as per the defendants, the land in dispute vests in Gram Panchayat as part of Gali Sar-e-am. It was, thus, held whether the land is Gali Sar-e-am or not is the question which is required to be adjudicated upon by the Collector in terms of Section 13-A of the Punjab Village Common Lands (Regulations) Act, 1961 (hereinafter referred to as the Act).

Learned counsel for the appellant has vehemently argued that the learned trial Court has recorded a finding on the basis of site plan produced by the plaintiff that the land cannot be said to be a Gali Sar-e-am. It is also pointed out that the Panchayat has not led any evidence in support of its plea that the land is Gali Sar-e-am. The said argument is not tenable for the reasons that the question whether the land is part of Gali Sar-e-am or not is the question which is required to be decided by the Collector under Section 13-A of the Act and not by the Civil Court. Under Section 13-A of the Act, a person has been given the right to file a suit for adjudication that the land is vested or deemed to be vested in the Panchayat and in respect of the question whether the land or any immovable property is shamlat deh or not or it is not vested in the Panchayat, the Collector has the jurisdiction to examine such question. Section 13-A of the Act reads as under:-

> "13-A. **Adjudication:-** (1) Any person or in the case of a Panchayat, either the Panchayat or its Gram Sachiv, the concerned Block Development and Panchayat Officer, Social Education and Panchayat Officer or any other officer duly authorized by the State Government in this behalf, claiming right, title or interest in any land or other immovable property vested or deemed to have been vested in the Panchayat under this Act, may file a suit for adjudication, whether such land or other immovable property is shamlat deh or not and whether any land or other immovable property or any right, title or interest the rein vests or does not vest in a Panchayat under this Act, in the Court of the

> Collector having jurisdiction in the area wherein such land or other immovable property is situated:
>
> Provided that no suit shall lie under this Section in respect of the land or other immovable property, which is or has been the subject matter of the proceedings under Section 7 of this Act under which the question of title has been raised and decided or under adjudication."

Therefore, once the plea is taken by the Gram Panchayat that the land is Gali Sar-e-am and is shamlat deh within the meaning of Section 2 (g) of the Act, the question is to be decided by the Collector under Section 13-A of the Act and not by the Civil Court.

Learned counsel for the appellant has also referred to a Single Bench judgmnt of this Court reported as ***Basheshar Nath and others versus The Gram Panchayat Mustafabad, 1996 (2) P.L.R.-645,*** to contend that the Civil Court alone has the jurisdiction to entertain such a suit. Learned counsel for the appellant has also referred to a Division Bench judgment of this Court reported as ***Chhankar Singh versus Joint Development Commissioner and others, 1999 (1) P.LR. 361,*** in support of his contention that the Civil Court has the jurisdiction to entertain the Suit. However, in the aforesaid judgment, it is held that an individual cannot seek declaration from the Collector that he is owner in possession of the land. The aforesaid judgments are prior to insertion of Section 13-A of the Act by Haryana Act No.9 of 1999. Consequently, such judgments have no application to the facts of the present case.

In view of the above, I do not find any illegality or

irregularity in the findings recorded by the Courts below which may give rise to any substantial question of law for consideration of this Court in second appeal.

The appeal stands dismissed.

11-05-2007 (HEMANT GUPTA)
*mohinder JUDGE